

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF AMERICAN TELEPHONE)	
TELEPHONE NETWORK, INC. FOR APPROVAL)	CASE NO. 95-101
OF A TRANSFER OF ASSETS TO MIDCOM)	
COMMUNICATIONS, INC.)	

O R D E R

This matter arising upon petition of MIDCOM Communications Inc. ("MIDCOM") and American Telephone Network, Inc. ("ATN") filed March 16, 1995, pursuant to 807 KRS 5:001, Section 7, for confidential protection of certain information contained in Exhibit 3 to the petitioners' application for approval of a transfer of assets on the grounds that disclosure of the information is likely to cause MIDCOM and ATN competitive injury, and it appearing to this Commission as follows:

MIDCOM and ATN have applied for approval for the transfer from ATN to MIDCOM of customer accounts, office and operating equipment, real estate leases, and other assets. The agreement, which is attached to the application as Exhibit 3, reveals the identity of the interexchange carriers with which MIDCOM has reseller agreements, the identity of the interexchange carriers for which ATN is a switched base reseller of long-distance telephone services and other related telephone services, the identity of the lessor from which unless the lessor is an individual ATN has leased certain real estate to be transferred, the commission that ATN will pay to

MIDCOM to act as its collection agent, and the amount ATN will pay MIDCOM if it fails to make available an operable Signal System 7 for DXC switches which MIDCOM is acquiring under the agreement. MIDCOM seeks to protect this information pursuant to the provisions of KRS 61.878(1)(c) on the grounds that disclosure of the information is likely to cause MIDCOM competitive injury.

The information sought to be protected is not known outside of ATN and MIDCOM and is not disseminated within ATN and MIDCOM except to those employees who have a legitimate business need to know and act upon the information.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in subsection (1) of KRS 61.878. That subsection exempts several categories of information. One category exempted by paragraph (c)1 is information confidentially disclosed to the Commission, which, if made public, would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To qualify for the exemption, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is publicly disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

In the petition, MIDCOM and ATN state generally that disclosure of the information sought to be protected would allow competitors to gain information about their customers and about

MIDCOM's strategy. The petition does not demonstrate how the information can be used to achieve that purpose and such use is not apparent from the information itself. Therefore, the information cannot be protected on those grounds.

MIDCOM and ATN also maintain that disclosure of the information would place MIDCOM at a competitive disadvantage in negotiations to acquire other providers of the services that ATN now provides. While disclosure of the information may influence the market value of companies similar to the company being transferred under the agreement, it would not affect the relative ability of MIDCOM to compete for the acquisition of other companies. Therefore, no competitive harm has been established and the information does not qualify for exemption.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential certain information in the agreement between MIDCOM and ATN be and is hereby denied.

2. The information sought to be protected from disclosure shall be held and retained by this Commission as confidential for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Orders herein.

Done at Frankfort, Kentucky, this

27th day of April, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director